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KENNETH CANNATA*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

HP TUNERS, LLC, a Nevada limited liability company;

**Plaintiff.**

vs.

KENNETH CANNATA,

### Defendants.

CASE NO. 3:18-CV-00527-LRH-WGC

**DEFENDANT KENNETH  
CANNATA'S MOTION TO REDACT  
SPECIFIED LINES IN HIS TRIAL  
BRIEF**

Pursuant to Local Rule 10-5, Defendant Kenneth Cannata (“Cannata”), by and through its counsel of record, hereby files this Motion to Redact Specified Lines in his *Trial Brief* (the “Brief”).

Specifically, Cannata seeks permission to redact statements in the Brief as specified herein in accordance with the protective order entered in this case.

DATED this 25th day of January 2023.

SHEA LARSEN

/s/ Bart K. Larsen, Esq.  
Bart K. Larsen, Esq.  
Nevada Bar No. 8538  
Kyle M. Wyant, Esq.  
Nevada Bar No. 14652

*Attorneys for Kenneth Cannata*

1     **I. INTRODUCTION**

2                 On or about June 6, 2019, this Court entered an Order granting Cannata and Plaintiff HP  
3 Tuners, LLC's ("Plaintiff") stipulation for protective order (the "Protective Order") [ECF No. 30].  
4 The Protective Order outlines various types of "Confidential" information, which includes non-  
5 public documents relating to the business and dealings of the parties. The specific lines of text  
6 and statements that Cannata necessarily included in his Brief may fall under the Protective Order's  
7 classification of Confidential Information. Although the information included therein will likely  
8 need to be used at trial, at this point in time and out of the abundance of caution, the information  
9 specifically described in more detail below should be redacted in compliance with the Protective  
10 Order.

11                 As such, Cannata respectfully requests that this Court grant this Motion, and authorize  
12 Cannata's redaction of the specified lines of text contained in his Brief.

13     **II. LEGAL STANDARD**

14                 Public "access to judicial records is not absolute." *Kamakana v. City & Cnty. Of Honolulu*,  
15 447 F.3d 1172, 1178-79 (9th Cir. 2006). Although a strong presumption of public access to judicial  
16 records exists, information such as "confidential business information, proprietary technology, and  
17 trade secrets are routinely protected by filing under seal...." *Collectors Coffee Inc. v. Blue Sunsets,*  
18 *LLC*, No. 2:17-cv-01252-JCM, 2017 U.S. Dist. LEXIS 96273 (D. Nev. June 21, 2017).  
19 Additionally, the public's interest in accessing court records is diminished when the document and  
20 confidential information therein is included with a non-dispositive motion as opposed to a  
21 dispositive motion. *See Kamakana*, 447 F.3d at 1179.

22                 Indeed, when the motion to be sealed/redacted (or the documents attached thereto) is a  
23 dispositive motion—i.e., summary judgment or a motion to dismiss—the party seeking to  
24 redact/seal must show a compelling reason as to why sealing or redaction is necessary. *Id.*  
25 However, when there is a "discovery document [attached] to a non-dispositive motion" the normal  
26 presumption of access to judicial records is rebutted, and the party seeking to seal or redact only  
27 need to show that "good cause" exists to protect this information from the public eye. *Id.* at 1179-  
28

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1       80. Put differently, a good cause showing will suffice to keep sealed records attached to  
 2 nondispositive motions. *Id.*

3                  Here, the pleading at issue which is sought to be redacted/sealed is Cannata's Brief for  
 4 trial. This is nondispositive, and thus the good cause standard applies. As is shown below, good  
 5 cause exists to redact/seal the exhibits submitted with Cannata's Brief as set forth herein.

6                  **III. GOOD CAUSE EXISTS TO GRANT THE MOTION AND ALLOW FOR THE  
 7 REDACTION TEXT NECESSARILY INCLUDED WITH CANNATA'S BRIEF AS  
 8 SET FORTH BELOW**

9                  Applying the good cause standard from *Kamakana*, the Motion should be granted based on  
 10 the language of the Protective Order stipulated to between the parties, as well as this Court's  
 11 comments to the same, and the fact that the information sought to be redacted/sealed is private  
 12 business information and dealings between the parties.

13                  The Protective Order defines "Confidential Material" as:

14                  2.1 "Confidential" material shall include the following documents and tangible  
 15 things produced or otherwise exchanged: business records and employee files;  
 16 documents relating to expertise and knowledge, including automotive tuning data  
 17 and data related to other types of vehicles; documents relating to undisclosed  
 18 advertising and marketing; management communications; pricing information;  
 19 agreements with employees and non-parties; technical information about a party's  
 20 products or anticipated products; ***communications and other nonpublic  
 21 documents relating to the business and dealings of the parties.***

22                  [ECF No. 30] (emphasis supplied). The Protective Order goes on to authorize, at ¶ 4.4, parties to  
 23 seek permission from the Court to file material under seal. *Id.* The Court also added comments at  
 24 the end of the Protective Order, requiring any motion to seal to comply with the requirements of  
 25 *Kamakana*. Here, all of the information requested to be redacted complies with the foregoing  
 26 requirements, and this Motion should be granted.

27                  Good cause exists here to redact the lines of text identified below and necessarily included  
 28 with the Brief because the information to be sealed goes directly to HPT's internal business  
 29 information and documents. *See In re Conagra Foods, Inc.*, 2014 U.S. Dist. LEXIS 194205, \*11  
 (C.D. Cal. Dec. 29, 2014) ("Courts routinely find that the risk of competitive harm arising from  
 the public disclosure of internal business documents constitutes a compelling reason that justifies

1 sealing.”). Moreover, HPT has claimed that the information set forth in Cannata’s trial brief may  
 2 be alleged trade secrets and alleged proprietary information of HPT. *See Kamakana*, 447 F.3d at  
 3 1179 (stating that the release of trade secrets is a compelling reason sufficient to outweigh the  
 4 public’s interest in disclosure and justify sealing court records).<sup>1</sup>

5 Specifically, by way of this Motion, Cannata seeks to redact/seal:

6 **Page 2, Lines 19-24 of the Brief (re: HPT financials);**  
 7 **Page 9, Lines 12-18 and 22 of the Brief (re: HPT business dealings and workings);**  
 8 **Page 10, Lines 1-3 of the Brief (re: HPT business dealings and workings);**  
 9 **Page 11, Lines 18-19 of the Brief (re: HPT’s alleged intellectual property); and,**  
 10 **Page 12, Lines 3, 5-10, and 26 of the Brief (re: HPT’s financials);**

11 This information falls under “communications and other nonpublic documents relating to the  
 12 business and dealings of the parties.” Good cause exists to redact/seal this information because  
 13 the public’s interest in the same does not outweigh the confidential nature of the amounts paid to  
 14 specific individuals, internal business dealings of HPT, the financials of HPT, or the internal  
 15 meetings and decisions of Plaintiff prior to the initiation of this litigation.

#### IV. CONCLUSION

16 Accordingly, Cannata respectfully requests that the identified lines of text included with  
 17 his Brief sealed as requested herein.

18 DATED this 25th day of January, 2023.

19 SHEA LARSEN

20 /s/ Bart K. Larsen, Esq.

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28 <sup>1</sup> While Cannata does not agree that the information is a trade secret, no formal ruling has been made and thus, a  
 compelling need currently exists to seal the documents.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2023, I electronically transmitted the foregoing  
**DEFENDANT KENNETH CANNATA'S MOTION TO REDACT SPECIFIED LINES IN**  
**HIS TRIAL BRIEF** to the Office of the Clerk of the United States District Court, District of  
Nevada, using the CM/ECF System, for filing and transmittal of a Notice of Electronic Filing to  
the CM/ECF registrants listed for this matter.

By: /s/ *Bart K. Larsen, Esq.*

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